

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 30th day of June 1998

Before

THE HON'BLE MR.JUSTICE CHANDRASHEKARAI AH

W.P.No: 35271/97

Between:

Arjun, s/o. Sabanna Motekar,
a/a. 48 years, Mutton merchant,
Haggadevara Oni, At:Saundatti,
Dist:Belgaum.

(By ~~Sri~~ M/s.Patil & Patil)

... Petitioner;

And:

Saundatti Yellamma Town
Municipal Council, at Saundatti,
R/by its Chief Officer.

... Respondent;

(By Sri.Vigneshwar S.Sastry)

This petition is filed under Arts.226 and 227 of the Constitution praying to quash the order of intimation dated 26-11-97 passed by R-1 (Annexure -F).

This petition coming on for preliminary hearing in B group this day the Court made the following:

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O R D E R

30-6-1998

The petitioner has been carrying on the business in the sale of mutton after obtaining licence from the respondent Municipal Council from the year 1981 in a private shop. This licence was challenged by one Balesh Jummanna Kalal, in a suit in OS No.73 of 1981 in the Court of the Munsiff, Saundatti. In the said suit, the respondent Municipality ^{plead in his defence} ~~defended~~ justifying the grant of licence in favour of the petitioner. Ultimately, this Court in CRP.No.3536/81 confirmed the order rejecting the request for grant of temporary injunction. It is submitted that the suit has been dismissed for non prosecution.

2. Immediately after the expiry of the licence, that was granted for the previous year, the petitioner filed an application for renewal of licence. His request for renewal of licence was rejected by the Municipality by its endorsement dated 26-11-1997 (Annexure-F). This endorsement is under challenge in this petition. The Municipality rejected the request of the petitioner for renewal on the ground of public interest and also on the ground that the application of the petitioner for

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renewal of licence to sell mutton in a shop which has not been specified or reserved for sale of mutton by the Municipality.

3. The learned counsel for the petitioner submitted that when the Municipality has granted the licence on an earlier occasion and the ^{said} right to sell was protected by refusing to grant an order of temporary injunction in favour of the plaintiff in the civil suit, there is no reason for the Municipality to refuse to renew the licence granted earlier. In order to consider the contention raised by the petitioner, it is useful to refer to certain provisions governing the sale of mutton in the Municipal area. Section 324 of the Karnataka Municipalities Act, 1964 (for short 'the Act') confers power to make bye laws on the subjects enumerated in the said section. Sec.324 (1)(b) (iii) of the Act reads thus:-

"as a market or shop for the sale of animals and birds intended for human food or of meat, fish or eggs or as a market for the sale of fruits or vegetables;"

Sec.243(1) of the Acts reads thus:-

"It shall be lawful for the municipal council to direct that no place not belonging to or vested in the municipal council shall be used for any of the purposes specified in sub-clauses (i), (ii), (iv) and (v) of clause (b) of sub section (1) of Section 324 except under and in accordance with the conditions of a licence from the municipal

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council which may grant such licences and if any of the conditions of licence is contravened or any bye law or any provisions of this Act is contravened, suspend, withhold or withdraw such licence whether the licensee is prosecuted under this Act or not."

From a reading of the abovesaid sections it is clear that in respect of the matters specified in sub clause (1)(b) of Sec.324 of the Act, ^{the Municipal Council} may direct the place not belonging or vested in the Municipal Council shall be used for any purpose specified in the abovesaid section. By virtue of the power conferred on the Municipal Council, the Municipal Council has framed the Regulations and Control of Private Markets and other places of sale intended for human food (model bye laws) 1996. Bye law No.50 reads as follows:-

"Sale as provided under any law governing the subject, no person shall use place for sale of meat intended for human consumption excepting the shops set apart in a public market or under licence shall be subject to the terms and conditions of licence."

4. In view of the provisions referred to above and bye laws, it is clear that no person shall use any place for sale of meat. In the endorsement it is seen that the Municipality in view of the complaint made by the general public and in the interest of general public refused to renew the licence. Further, under the abovesaid provisions no person is authorised to sell any meat in a place

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which is not specified by the Municipality.

Admittedly, the petitioner is carrying on the business in the sale of meat in a place not¹ specified by the Municipality. Therefore, the petitioner has no right to demand for renewal of licence in order to carry on the sale of meat in a place ~~in order~~ not specified by the Municipality.

5. The learned counsel for the petitioner nextly contended that the Municipal Council has not afforded any opportunity before refusing to renew the licence. In the case on hand, admittedly the petitioner is seeking for renewal of licence to carry on the business in the sale of meat in a place not set apart for sale of meat by the Municipality. Therefore, even assuming that an opportunity had been given, the case of the petitioner will not improve. Therefore, I find no reason to interfere ~~in~~ this petition.

6. Accordingly, writ petition is rejected. Since the writ petition is dismissed on merits, IA-I filed for impleading is also rejected.



Sd/-
JUDGE